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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,033	11/21/2003	Christopher L. Gerding	117018-00003	2836
7590		10/15/2007		
Peter R Martinez				
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Carlsbad, CA 92013				
			EXAMINER	
			MCCULLOCH JR, WILLIAM H	
			ART UNIT	PAPER NUMBER
			3714	
			MAIL DATE	DELIVERY MODE
			10/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/719,033

Applicant(s)

GERDING, CHRISTOPHER L.

Examiner

William H. McCulloch Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9, 15 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 15 and 21-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/15/2007 has been entered. Claims 9, 15, and 21-32 are pending in the application. All claims are as previously presented.

### ***Priority***

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date as follows:

This application is claiming the benefit of prior-filed nonprovisional application number 09/781069 under 35 U.S.C. 120. Copendency between the current application and the prior application is required. Since the applications are not copending, the benefit claim to the prior-filed nonprovisional application is improper. Applicant is required to delete the reference to the prior-filed application from the first sentence(s) of the specification, or the application data sheet, depending on where the reference was originally submitted, unless applicant can establish copendency between the applications.

Application number 09/781069 was abandoned on 8/26/2003. The instant application was filed on 11/21/2003. The applications were not copending and therefore, the earliest priority date of the instant application is 11/21/2003. Because the instant application cannot properly claim priority to application number 09/781069, it similarly cannot properly claim priority to the provisional application number 60/218308.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9, 15, 22 – 28 and 30 – 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Retrogames X-Arcade Review <[http://web.archive.org/web/20020212111524/www.retrogames.com/xarcade\\_review.html](http://web.archive.org/web/20020212111524/www.retrogames.com/xarcade_review.html)>.

Regarding Claims 15 and 26, Retrogames discloses a video game cabinet apparatus including a housing having a support for a video monitor therein (p. 1, The Package; where a video game apparatus has a cabinet holding a video game controller and has support for outputting control data to a video game system including a monitor) and a control module communicating with the video monitor and comprising an arcade control for a video game, the control module structured to be compatible for use with a plurality of different video game systems (p. 1, Introduction; where an X-Arcade has support for multiple console systems).

Regarding Claim 22, Retrogames discloses a video game control system including at least one controller (p. 4, Conclusion, where a controller image is provided), and a control device interconnected to the controller by which operation of the video game control system may be controlled to play selectively from at least two different video game systems (p. 3, Hardware).

Regarding Claim 30, Retrogames discloses an apparatus including a control module comprising an arcade control for a video game, the control module structured to be compatible for use with a plurality of video game systems selected from the group consisting of: a MICROSOFT XBOX, a SONY PLAYSTATION, a PC-based computer system, a MACINTOSH computer system, and a combination of two or more thereof (p. 3, Hardware).

Regarding Claim 9, Retrogames discloses a video game apparatus including a switching system structured to allow a user to select which of the plurality of different video game systems are to be operated (p. 4, Conclusion; Adapter System).

Regarding Claims 23 – 24 and 27, Retrogames discloses a video game control system where the at least two different video game systems is selected from the group consisting of: a MICROSOFT XBOX, a SONY PLAYSTATION, a PC-based computer system, a MACINTOSH computer system, and a combination of two or more thereof (p. 3, Hardware).

Regarding Claims 25, 28 and 31, Retrogames discloses a video game apparatus where the arcade control comprises at least one element selected from the group consisting of: a button, a joystick, and a combination of two or more thereof (p. 4, Conclusion, where a controller image is provided with buttons and joysticks).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21, 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Retrogames in view of Willner et al. (U.S. Patent 5,874,906).

Regarding Claim 21, Retrogames discloses an apparatus including a switch device to selectively switch between different video game systems, wherein transmission associated with each prospective game system will not interfere with transmission of other game systems (p. 3, Hardware; where a game controller switching system disconnects a controller from one system and connects it to another, eliminating interference). Retrogames does not disclose a wireless game controller link. However, Willner teaches a wireless controller link (col. 9, ll. 8 – 12) in order to increase comfort for a player and eliminate tangled cords. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the wired game controller

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with no interference of Retrogames with the wireless game controller of Willner in order to increase comfort for a player and eliminate tangled cords.

Regarding Claim 29 and 32, Retrogames discloses an apparatus where the control module communicates with the plurality of video game systems (p. 3, Hardware). But does not disclose wireless communication. However, Willner teaches wireless communication between a game controller and a game system where the wireless communication is accomplished by an element selected from the group consisting of: a radio frequency (RF) transmitter and receiver, and an infrared (IR) transmitter and receiver (col. 9, ll. 8 – 12), in order to increase comfort for a player and eliminate tangled cords. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the wired game controller with no interference of Retrogames with the wireless game controller of Willner in order to increase comfort for a player and eliminate tangled cords.

### ***Response to Arguments***

7. Applicant's arguments filed 2/15/2007 have been fully considered but they are not persuasive.

Applicant contends that the applied references are not prior art based on their publication date. The Examiner disagrees. As described in the Priority section above, the instant application is entitled to a priority date of 11/21/2003. The applied references were publicly available more than one year prior to the priority date of this application. Thus, the previous rejection is deemed proper.

Furthermore, the rule 132 affidavit submitted 10/31/2005 is not sufficient to overcome the above rejections because the affidavit only seeks to show that the applicant is the inventor of a particular product ("Havok System Master"). Furthermore, the affidavit assumes a claim of priority to a provisional application could be properly made. Based on the explanation given in the Priority section above, the priority claim to a provisional application filed 7/14/2000 is improper.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. McCulloch Jr. whose telephone number is 571-272-2818. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William H. McCulloch Jr.  
Examiner  
Art Unit 3714  
10/9/2007

wm



Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3714